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UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Shepard
Wiley, Judge, Dept. "50"]

NOTICE OF MOTION AND MOTION
FOR DISCOVERY OF PEACE OFFICER
PERSONNEL AND OTHER RECORDS
REGARDING BURBANK POLICE
DEPARTMENT LIEUTENANT JAY
JETTE; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION
OF CHRISTOPHER BRIZZOLARA

Date: September 17, 2010

Time: 8:30 a.m.

Dept.: 50

Action Filed: 9/22/09

FSC: November 5, 2010

Trial: November 16, 2010

8/25

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE
2 CITY OF BURBANK, THE CITY OF BURBANK POLICE DEPARTMENT, AND TO JAY
3 JETTE:

4 PLEASE TAKE NOTICE that on September 17, 2010 at 8:30 a.m. in the Los Angeles
5 County Superior Court, 111 N. Hill Street, Department 50, Los Angeles, California 90012, plaintiff
6 William Taylor (hereafter "plaintiff") will move for an order that defendant City of Burbank
7 ("defendant") and the Burbank Police Department ("BPD") produce certain records regarding
8 former BPD Lieutenant Jay Jette and defendant pursuant to *Evidence Code* §§ 1043 and 1045.
9

10 Plaintiff requests the following:

- 11 1. A completed copy of the BPD internal affairs investigation which originated in or around
12 March, 2009 pertaining to allegations that Jay Jette had engaged in sexual harassment, a sexually
13 hostile work environment, and/or sexual discrimination at the City of Burbank Animal Shelter;
- 14 2. All documents pertaining to allegations that Jay Jette perpetrated acts of sexual
15 harassment on City of Burbank Animal Shelter female employees, including, *inter alia*: a) Jay
16 Jette pointing a heat sensor at the crotch area of any female employee and stating: "oh, you're
17 hot down there, "it's hot down there", or words to that effect and/or substance; b) Jay Jette
18 making a sexual gesture toward any female employee who was eating a banana, and stating: "you
19 sure look like you are enjoying that banana", inferring as though the employee was engaging in
20 oral sex; and/or c) any other lewd gestures and/or comments toward female employees;
- 21 3. All documents pertaining to allegations and/or statements by City of Burbank Animal
22 Control Officer Brenda Castenada to BPD Captain Craig Varner, BPD Captain Janice Lowers,
23 and/or any other agent and/or employee of defendant regarding allegations of sexual harassment
24 concerning Jay Jette;
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1 4. All documents pertaining to allegations that Jay Jette showed other employees sexually
2 inappropriate nude pictures on duty;

3 5. All documents pertaining to allegations that Jay Jette had photographs and/or
4 videotapes/video clips of nude individuals in his locker, on one or more computers, on a flash
5 drive, or elsewhere in the work environment, including all such photographs, videotapes, and/or
6 video clips, and all data files in regard thereto (jpeg, mpeg, or any other type of electronic
7 photographic and/or videographic data files) regarding such photographs, videotapes, and/or
8 video clips;

9
10 6. All documents pertaining to allegations that Jay Jette created and/or maintained hand
11 written notes regarding former BPD Chief of Police Tim Stehr related to Chief Stehr's inter-
12 departmental and/or other statements about kidnapping transients and removing them from the
13 City of Burbank;

14
15 7. All documents pertaining to allegations that Jay Jette kept numerous photographs of nude
16 females in his locker in the workplace;

17 8. All documents pertaining to allegations that Jay Jette kept \$10,000 dollars in his locker in
18 the workplace for unknown and/or for illegitimate reasons;

19 9. All documents pertaining to BPD Captain Janice Lowers being involved in any manner in
20 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
21 on City of Burbank Animal Shelter female employees;

22
23 10. All documents pertaining to BPD Captain Craig Varner being involved in any manner in
24 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
25 on City of Burbank Animal Shelter female employees;

1 11. All documents pertaining to City Manager Michael Flad being involved in any manner in
2 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
3 on City of Burbank Animal Shelter female employees;

4 12. All documents pertaining to the Burbank Police Commission being involved in any manner
5 in regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
6 on City of Burbank Animal Shelter female employees;

7 13. All documents pertaining to City of Burbank Human Resources Director Judie Wilke being
8 involved in any manner in regard to any investigation into allegations that Jay Jette perpetrated
9 acts of sexual harassment on City of Burbank Animal Shelter female employees;

10 14. All documents pertaining to City of Burbank Assistant City Attorney Juli Scott and/or any
11 other member of the City of Burbank City Attorney's Office being involved in any manner in regard
12 to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City
13 of Burbank Animal Shelter female employees;

14 15. All documents pertaining to BPD Lt. Omar Rodriguez being involved in any manner in
15 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
16 on City of Burbank Animal Shelter female employees;

17 16. All documents pertaining to BPD Lt. Jon Murphy being involved in any manner in regard
18 to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City
19 of Burbank Animal Shelter female employees;

20 17. All documents pertaining to BPD Sgt. Misquez being involved in any manner in regard to
21 any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City of
22 Burbank Animal Shelter female employees;

1 18. All documents pertaining to BPD Lt. Jon Murphy being involved in any manner in regard
2 to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City
3 of Burbank Animal Shelter female employees;

4 19. All documents pertaining to any City of Burbank Animal Shelter volunteer and/or employee
5 communicating with City of Burbank City Council Members regarding sexual harassment and/or
6 other misconduct at the City of Burbank Animal Shelter;

7 20. All documents pertaining to BPD Sgt. Jose Duran being assigned by BPD Captain Janice
8 Lowers to conduct any investigation into allegations that Jay Jette perpetrated acts of sexual
9 harassment on City of Burbank Animal Shelter female employees;

10 21. All documents pertaining to any investigation conducted by BPD Sgt. Jose Duran into
11 allegations that Jay Jette perpetrated acts of sexual harassment on City of Burbank Animal
12 Shelter female employees;

13 22. All documents pertaining to Jay Jette following and/or stalking BPD Sergeant Jose Duran,
14 a Hispanic sergeant;

15 23. All documents pertaining any investigation by BPD Lt. Omar Rodriguez that Jay Jette
16 following and/or stalking BPD Sergeant Jose Duran;

17 24. All documents pertaining any investigation by BPD Lt. Jon Murphy that Jay Jette following
18 and/or stalking BPD Sergeant Jose Durant;

19 25. All documents pertaining any investigation by BPD Sgt. Misquez that Jay Jette following
20 and/or stalking BPD Sergeant Jose Duran;

21 26. All documents, including memoranda, written by BPD Sgt. Jose Duran in which Sgt. Duran
22 alleged that he was being subjected to a separate hostile work environment, including, *inter alia*,
23 that he was the victim of burglaries, being followed around illegally, and harassed, and/or in which
24 Sgt. Duran requested that an internal investigation be conducted regarding these allegations;
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1 27. All documents pertaining to BPD Sgt. Jose Duran complaining about Jay Jette following
2 and/or stalking him, including, *inter alia*: a) any notes prepared by Jay Jette pertaining to Jay
3 Jette stalking and/or following BPD Sgt. Jose Duran; b: any memoranda prepared by and/or
4 submitted by BPD Sgt. Jose Duran complaining that Jay Jette and other BPD employees were
5 creating a hostile work environment for him;
6

7 28. All documents pertaining to any steps taken by former BPD Chief of Police Tim Stehr
8 and/or any other agent and/or employee of the City of Burbank to prevent discrimination and/or
9 harassment by Jay Jette from occurring in the City of Burbank Animal Shelter;
10

11 29. All documents pertaining to any communications between former BPD Chief of Police Tim
12 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
13 regarding allegations that Jay Jette had perpetrated acts of sexual harassment on City of Burbank
14 Animal Shelter female employees;
15

16 30. A copy of each of Jay Jette's time cards for March, 2009 to present, including, *inter alia*,
17 all time cards evidencing when: a) Jay Jette was placed on administrative leave; b) Jay Jette was
18 returned to work by former BPD Chief Tim Stehr and/or other agents and/or employees of the City
19 of Burbank; and c) Jay Jette was returned to administrative leave;
20

21 31. All documents pertaining to any communications between former BPD Chief of Police Tim
22 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
23 regarding placing Jay Jette on administrative leave from 2009 to present;
24

25 32. All employee comment cards and officer index cards referencing and/or evidencing any
26 disciplinary records and/or internal affairs files regarding Jay Jette from 2005 to present;
27

28 33. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
the BPD into allegations that Jay Jette engaged in any misconduct from 2006 to present;

1 34. All statements, including all audio tapes and transcriptions thereof, taken of any person
2 during any internal affairs or other investigation regarding allegations that Jay Jette engaged in
3 any misconduct from 2006 to present;

4 35. All personnel or other complaints by any person against Jay Jette from 2006 to present;

5 36. All documents evidencing or pertaining to any investigation, and the findings, evidence
6 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
7 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
8 agents or employees regarding any of the above matters, including the entire internal affairs files;

9 37. All documents evidencing or pertaining to any discipline, including but not limited to oral
10 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
11 Burbank, the Burbank Police Department, and/or their agents or employees against Jay Jette
12 regarding any of the above described matters;

13 38. All documents evidencing or pertaining to whether Jay Jette was permitted by defendant
14 to keep a CCW (concealed firearm permit) and police retirement badge following his
15 separation/retirement from the BPD; and

16 39. All documents evidencing or pertaining to any complaints, any investigations of any such
17 complaints, and the disposition of any such complaints, made by any person against Jay Jette
18 from 2006 to present, including internal complaints, personnel complaints, governmental claims,
19 or civil lawsuits.

20 The proceedings at which disclosure are sought include the depositions and/or other
21 discovery proceedings, mediation, trial, appeal, and other proceedings in this action. Plaintiff is
22 informed and believes that the City of Burbank and/or the Burbank Police Department are in
23 possession of the requested Pitchess and other documents, and routinely create and maintain
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1 such documents in the course of business. The further verified responses and documents are
2 requested to be produced within fifteen (15) days of the date of the hearing of this matter.

3 Dated: 8/24/10

4
5 By: 

6 Gregory W. Smith
7 Christopher Brizzolara
8 Attorneys for Plaintiff
9 WILLIAM TAYLOR
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1 A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to *Evidence*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police. Plaintiff was employed as a sworn peace officer with the BPD for nearly twenty six years and progressed steadily through the ranks of the BPD to the rank of Deputy Chief of Police, the second highest rank in the BPD.

In or around March, 2009, plaintiff complained to Chief Stehr that then BPD Lt. Jay Jette was sexually harassing females at the Burbank Animal Shelter. Plaintiff recommended that this lieutenant be placed on leave pending an investigation of the lieutenant's misconduct. Chief Stehr refused to place Lt. Jette on leave of sufficient length to conduct a thorough investigation of the allegations, and became angry at plaintiff for making the recommendation. Chief Stehr subsequently insisted, over the objections of plaintiff, that Lieutenant Jette be prematurely taken off administrative leave and returned to full duty with the BPD.

In or around March, 2009, plaintiff informed Burbank City Manager Michael Flad ("Flad"), the highest ranking administrative official in the City of Burbank, on at least two occasions, about the magnitude of the sexual harassment conducted by Lt. Jette at the Burbank Animal Shelter. In or around April and May 2009, on at least two separate occasions, plaintiff informed Flad that the Lt. Jette had inside information regarding Chief Stehr, and as a result thereof Chief Stehr had refused to place Lt. Jette on sufficiently long administrative leave. Plaintiff also informed Flad that he believed that Lt. Jette had in fact sexually harassed females at the Burbank Animal Shelter.

1 In or around April, 2008 through May 4, 2009, plaintiff, then the Deputy Chief of Police of
2 the Burbank Police Department, complained on at least eight different occasions to Chief Stehr
3 that minority officers in the BPD were being subjected to discrimination, and were being unjustly
4 targeted for termination. In or around April, 2009, plaintiff reported on at least two occasions to
5 Burbank City Councilwoman Marsha Ramos, that he believed that minority officers in the BPD
6 were being subjected to discrimination by the BPD by targeting them for unjust termination. In or
7 around April, 2009, plaintiff reported on at least two occasions to Burbank City Manager Flad that
8 he believed that minority officers in the BPD were being subjected to discrimination by the BPD.
9

10 Thereafter, on or about May 4, 2009, in retaliation for his whistleblowing activities protected
11 pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting
12 harassment and discrimination in violation of FEHA against other BPD employees, plaintiff was
13 demoted from the rank of Deputy Chief of Police to the rank of Captain. Further, on or about
14 January 21, 2010, plaintiff was placed on involuntary leave by the BPD for specious and
15 unfounded allegations of misconduct.
16

17 On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or
18 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*
19 Section 1102.5 with the defendant.
20

21 On or about September 17, 2009, defendant sent plaintiff, via his counsel, a letter and a
22 memorandum purporting to set forth the alleged internal affairs charges against plaintiff. On or
23 about September 30, 2009, plaintiff was interrogated by defendant regarding these alleged
24 charges. On or about June 11, 2010, plaintiff was terminated from his employment by defendant
25 based upon specious and unfounded allegations of misconduct.
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1 II. THE REQUESTED INFORMATION AND DOCUMENTS ARE RELEVANT TO
2 PLAINTIFF'S CAUSES OF ACTION

3 The *McDonnell Douglas* burden-shifting framework applies in FEHA retaliation cases as
4 well as discrimination cases under both federal and state law. The same framework also applies
5 to retaliation actions premised on violations of *Labor Code* Section 1102.5. *Patten v. Grant Joint*
6 *Union High School District* (2005) 134 Cal.App.4th 1378. Under this framework, a plaintiff is
7 required to establish a prima facie case, which consists of showing that: a) plaintiff engaged in a
8 protected activity; b) the employer subjected plaintiff to an adverse employment action; and c)
9 a causal link exists between the protected activity and the employer's action. *Passantino v.*
10 *Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 506 (under Title VII);
11 *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1044, 32 Cal.Rptr.3d 436, 446 (under
12 FEHA).

14 The causal link may be based solely on the timing of the relevant actions: "Specifically,
15 when adverse employment decisions are taken within a reasonable period of time after complaints
16 of discrimination have been made, retaliatory intent may be inferred." *Passantino v. Johnson &*
17 *Johnson Consumer Products, Inc., supra*, 212 F.3d at 507; *Mulhall v. Ashcroft* (6th Cir. 2002) 287
18 F.3d 543, 551; *Mariani-Colon v. Department of Homeland Security ex rel. Chertoff* (1st Cir. 2007)
19 511 F.3d 216, 224 - temporal proximity (2 months) between protected activity and discharge
20 sufficient for relatively light burden of establishing prima facie case of retaliation.

22 Thus, the temporal relationship between engaging in the protected activity and a
23 subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v. North*
24 *American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on the part of
25 a defendant employer which proceed in linear fashion from whistleblower disclosures and
26 culminating in adverse employment actions present a triable issue of material fact as to a "causal
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1 link" between the protected activity and the adverse employment action. *Patten v. Grant Joint*
2 *Union High School District, supra*, 134 Cal.App.4th at 1390.

3 Here, the temporal and linear connection is both direct and obvious. After plaintiff reported
4 to defendant City of Burbank's former Chief of Police Tim Stehr and Burbank City Manager
5 Michael Flad that Lt. Jette was alleged to have engaged in serious sexual harassment, creating
6 a sexually hostile work environment, and/or sexual discrimination against female employees of
7 the City of Burbank Animal Shelter, plaintiff was subjected to a series of adverse employment
8 actions, including demotion and culminating in termination of plaintiff's employment with
9 defendant. Further, former BPD Chief Stehr engaged in a pattern of misconduct designed to
10 attempt to conceal and minimize the serious nature of the sexual and other misconduct engaged
11 in by Lt. Jette, including berating plaintiff for insisting that Chief Stehr take appropriate corrective
12 and remedial action in regard thereto. The relationship between plaintiff's whistleblowing activities
13 and the adverse employment actions is sufficient by itself to provide circumstantial evidence of
14 retaliation sufficient to establish a prima facie case. In *Colarossi v. Coty US Inc.* (2002) 97 Cal.
15 App. 4th 1142, the court noted that "suspicious" timing of the employer's actions may provide the
16 circumstantial link needed to infer that an improper purpose accounted for the adverse action. (*Id.*
17 at 1154.) "The timing of the decision may have been coincidental, but when viewed as part of the
18 mosaic of evidence" plaintiff presented, it will support the causal element of an employment claim.
19 As stated in *Passantino v. Johnson & Johnson Consumer Prods., Inc., supra*, 212 F.3d at 507:
20 "[T]his close timing provides circumstantial evidence of retaliation that is sufficient to create a
21 prima facie case of retaliation." (noting that causation can be inferred from timing alone.); See
22 also, e.g. *Miller v. Fairchild Indus.* (9th Cir. 1989) 885 F. 2d 498, 505.
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1 Once, as here, the plaintiff has established a prima facie case, the employer must then
2 articulate a legitimate, nonretaliatory reason for each of the adverse employment actions taken.
3 If the defendant is able to do so, then the plaintiff must prove the employer's reason is a pretext.
4 *Stegall v. Citadel Broadcasting Co.* (9th Cir. 2003) 350 F.3d 1061, 1065; *Flait v. North American*
5 *Watch Corp.* (1992) 3 Cal.App.4th 467, 475-476.

6
7 Here, plaintiff engaged in the activities of whistleblowing and reporting and protesting
8 harassment and discrimination in the workplace, which activities are protected activities under
9 *Labor Code* Section 1102.5 and FEHA. Within a short time of engaging in such protected
10 activities plaintiff was demoted from the rank of Deputy Chief to Captain, was subsequently
11 placed on administrative leave, based upon the false and specious alleged reason that plaintiff
12 had engaged in improprieties, including that plaintiff had improperly interfered in and attempted
13 to influence an internal affairs investigation, and has now been terminated from his employment
14 by defendant. Plaintiff contends that the alleged reasons for these adverse employment actions
15 are false and a sham, and are simply a pretext for retaliating against plaintiff based upon his
16 engaging in the protected activities enumerated above. Plaintiff further contends that defendant's
17 retaliatory actions were intended to attempt to discredit plaintiff and undermine his activities in
18 protesting the sexual and other misconduct of Lt. Jette. It is well settled that evidence of
19 dishonest reasons for adverse employment actions proffered by the employer permits a finding
20 of prohibited motive, bias, or intent. *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530
21 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St. Mary's Honor Center v. Hicks* (1993) 509 U.S.
22 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.

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25 Pretext, like a prima facie showing of causation, may be inferred from the timing of the
26 company's termination decision, by the identity of the person making the decision, and by the
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1 terminated employee's job performance before termination. *Sada v. Robert F. Kennedy Medical*
2 *Center* (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American Watch Co., supra*,
3 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*, 885 F.2d 498, 505-06 (9th
4 Cir. 1989). These factors support an inference that defendant's stated reason for taking adverse
5 employment actions against plaintiffs were merely a subterfuge for its retaliatory conduct. See,
6 *Sada v. Robert F. Kennedy Medical Center, supra*, 56 Cal.App.4th at 156; *Flait v. North American*
7 *Watch Co., supra*, 3 Cal.App.4th at 480 ("Viewing the evidence in the light most favorable to [the
8 plaintiff], a reasonable trier of fact could conclude that [the defendant's] articulated reasons for
9 terminating [the plaintiff's] employment are not worthy of credence").

11 As such, the information and documents sought by this motion are directly relevant and
12 discoverable to establish that: a) the information reported by plaintiff to former BPD Chief of Police
13 Stehr and to Burbank City Manager Flad was credible; b) Lt. Jette had engaged in sexual
14 harassment, creating a sexually hostile work environment, and/or other forms of sexual
15 harassment and/or discrimination against female employees of the Burbank Animal Shelter; c)
16 defendant and its agents and/or employees, including former BPD Chief of Police Stehr and
17 Burbank City Manager Flad failed to take reasonable to prevent discrimination and/or harassment
18 by BPD Lt. Jay Jette from occurring in the City of Burbank Animal Shelter; and d) the defendant's
19 adverse employment actions taken against plaintiff were taken at least in part to retaliate against
20 plaintiff for reporting the misconduct of Lt. Jette, and to attempt to discredit plaintiff in order to
21 deflect attention away from the failure by former BPD Chief Stehr, Burbank City Manager Flad,
22 and other agents and/or employees of the defendant to take all reasonable steps to prevent the
23 sexual and other misconduct of Lt. Jette from occurring as they were required to do by
24 *Government Code* Section 12940(k) and other authorities. Such evidence is also directly relevant
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1 and discoverable in regard to plaintiff establishing that the defendant's proffered reasons for the
2 adverse employment actions taken against him culminating in the termination of his employment
3 with defendant are false and pretextual.

4 **III. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL AFFAIRS**
5 **STATEMENTS AND OTHER DOCUMENTS REGARDING THE INCIDENTS AT ISSUE**
6 **IN ORDER TO: A) CORROBORATE THAT PLAINTIFF ENGAGED IN ACTIVITIES**
7 **PROTECTED BY GOVERNMENT CODE SECTION 12940(h); B) CORROBORATE THAT**
8 **LT. JETTE ENGAGED IN SEXUAL HARASSMENT AND OTHER MISCONDUCT IN THE**
9 **WORKPLACE PROHIBITED BY FEHA IN GOVERNMENT CODE SECTION 12940 AND**
10 **OTHER AUTHORITIES ; C) ESTABLISH THAT PLAINTIFF WAS SUBJECTED TO FEHA**
11 **RETALIATION BY DEFENDANT AS PROHIBITED BY GOVERNMENT CODE SECTION**
12 **12940(h); D) REBUT DEFENDANT'S ALLEGED REASON FOR TAKING THE ADVERSE**
13 **ACTIONS AT ISSUE AGAINST PLAINTIFF; E) AND TO ALLOW PLAINTIFF AND**
14 **PLAINTIFF'S COUNSEL TO PREPARE FOR DEPOSITIONS AND TRIAL, AND TO BE**
15 **ABLE TO IMPEACH THE TESTIMONY AND REFRESH THE RECOLLECTIONS OF**
16 **WITNESSES, AS HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY V.**
17 **SUPERIOR COURT CASE**

18 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1089, the court specifically held
19 that disclosure pursuant to the Pitchess procedure of internal affairs investigation reports and
20 other investigative materials regarding the incident at issue in the civil case against a deputy
21 sheriff, including internal affairs interviews, transcripts, and other data, was proper. Here,
22 similarly, the Court should order the production of all relevant reports, investigative materials,
23 interviews, transcripts, and other data regarding the investigation and disposition of any
24 complaints of misconduct allegedly involving plaintiff.

25 Here, as in *Haggerty v. Superior Court*, *supra*, 17 Cal.App. 4th at 1089 - 1091, the facts
26 gleaned from the internal investigations at issue are directly relevant to the matters at issue in the
27 lawsuit. Moreover, as in *Haggerty*, the requested discovery is important, not only for determining
28 the events that occurred during the incidents, but also for plaintiff's counsel to prepare effective
cross-examination of defense witnesses, including to impeach witnesses whose testimony at trial
differs from statements made to the investigating officers and/or to refresh the recollections of

1 these witnesses. (See *People v. Husted* (1999) 74 Cal.App.4th 410, 417; see also, *People v.*
2 *People v. Memro* (1985) 38 Cal.3d 658, 677 ["one legitimate goal of [*Pitchess*] discovery is to
3 obtain information 'for possible use to impeach or cross-examine an adverse witness.] See also,
4 *Garden Grove Police Dept. v. Superior Court* (2001) 89 Cal.App.4th 430, 433.

5
6 Plaintiff is therefore entitled to the requested information not only to use as substantive
7 evidence to establish that defendant's alleged reasons for the adverse employment actions at
8 issue are pretextual, but also to use to impeach the testimony and/or refresh the recollections of
9 defense and other witnesses. As in *Haggerty*, the investigations at issue concern the very
10 incidents that are the subject of the civil claim. Additionally, as in *Haggerty*, the privacy concerns
11 of defendant and its employees are diminished because they are the persons and/or entities
12 whose conduct is at issue in the litigation, and the requested internal investigation records
13 concern their actions that are alleged to be wrongful and will be fully litigated at trial.

14
15 Because of the direct relevance of the information, courts have recognized that the law
16 enforcement records of the investigations of the matters at issue in the case are discoverable and
17 have never imposed any special limitations on this disclosure if the requested discovery otherwise
18 meets the statutory criteria. (See *Robinson v. Superior Court* (1978) 76 Cal.App.3d 968, 978 -
19 "[a]ll statements made by percipient witnesses and witnesses ... related to the incident in question
20 ... are discoverable under the standards set forth in *Pitchess*" ; see also *People v. Alexander*
21 (1983) 140 Cal.App.3d 647, 659, disapproved on another point in *People v. Swain* (1996) 12
22 Cal.4th 593.

23
24 Further, the *Haggerty* court also rejected the contention that the disclosure of relevant
25 internal affairs records would have a chilling effect on every law enforcement agency's ability to
26 conduct an uninhibited, thorough and candid analysis of a complaint, finding such concerns
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1 speculative. The court noted that the question of whether police investigation records are
2 discoverable has been unequivocally answered in the affirmative by the Legislature in enacting
3 the *Pitchess* statutory scheme, and that the *Pitchess* "legislation was intended to balance the
4 need of criminal defendants [and civil litigants] to relevant information and the legitimate concerns
5 for confidentiality of police personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The
6 court held that in balancing these interests, the Legislature made a decision that relevant evidence
7 contained in a personnel file, including internal investigation records and reports, should be
8 disclosed upon a proper showing of materiality and relevance, and did not provide any blanket
9 exceptions to the discoverability of such reports, particularly in the civil context. *Haggerty v.*
10 *Superior Court, supra*, 17 Cal.App. 4th at 1091 - 1092.

11
12 Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
13 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
14 information and documents sought are directly relevant and material to plaintiff's contentions that:
15 a) plaintiff engaged in activities protected by FEHA (i.e., reported and opposed sexual
16 harassment and other sexual discrimination prohibited by FEHA, and attempted to file and/or filed
17 a complaint, testified, or assisted in investigations regarding such sexual harassment and other
18 sexual discrimination prohibited by FEHA); b) was subjected to adverse employment actions, up
19 to and including termination, for engaging in such protected activities; and c) to establish the
20 reason given for the retaliatory actions by defendant are false, a sham, and simply a pretext for
21 retaliation. As such, the records pertaining to the investigations by defendant of the allegations
22 made against Lt. Jette are relevant and material. The information and documents sought should
23 be disclosed to plaintiff. In the alternative, such information and documents should be examined
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1 by the court *in camera*, and all evidence relevant to plaintiff's claims should be turned over to
2 plaintiff's counsel.

3 **IV. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED DOCUMENTS**

4 **A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to Evidence**
5 **Code §1043(a) and 1045(a)**

6 *Evidence Code* §1043 and 1045(a) provide that if the personnel records and information
7 contained therein are relevant to the subject matter of the litigation, upon motion by the party
8 seeking the records and information there is a right of access to the records of complaints,
9 investigations of complaints, and discipline imposed as a result of such investigations.

10 *Evidence Code* §1045(a) provides as follows:

11
12 **"(a) Nothing in this article shall be construed to affect the right of access to**
13 **records of complaints, or investigations of complaints, or discipline imposed as a**
14 **result of such investigations, concerning an event or transaction in which the peace**
15 **officer participated, or which he perceived, and the manner in which he performed**
16 **his duties, provided that such information is relevant to the subject matter involved**
17 **in the pending litigation. (Emphasis added)**

18 This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386,
19 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not limited to facts
20 that may be admissible at trial, but may include facts that could lead to the discovery of admissible
21 evidence. *People v. Memro, supra*, 38 Cal.3d at 681-682; *People v. Hustead, supra*, 74
22 Cal.App.4th at 423.

23 Under the statutory scheme, a party seeking discovery of a peace officer's personnel
24 records need only file a written motion describing the type of records sought, supported by
25 "[a]ffidavits showing good cause for the discovery... , setting forth the materiality thereof to the
26 subject matter involved in the pending litigation and stating upon reasonable belief that the
27 governmental agency identified has the records or information from the records." (*Evidence Code*
28

1 § 1043(b)(3).) This initial burden is a "relatively relaxed standard." *City of Santa Cruz v.*
2 *Municipal Court* (1989) 49 Cal.3d 74, 84. Information is material as defined by *Evidence Code*
3 § 1043(b)(3) if it 'will facilitate the ascertainment of the facts and a fair trial.' "[A] declaration by
4 counsel on information and belief is sufficient to state facts to satisfy the 'materiality' component
5 of that section." *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 51.
6

7 In *Santa Cruz v. Municipal Court, supra*, 49 Cal.3d 88 - 89, the California Supreme Court
8 held that personal knowledge is not required by *Evidence Code* 1043(b) and that an affidavit on
9 information and belief is sufficient. The Court found that in the context of Pitchess motions, the
10 Legislature had expressly considered and rejected a requirement of personal knowledge. The
11 Court held that the legislative history, the case law background, and the statutory language all
12 point to the same conclusion: the "materiality" component of *Evidence Code* § 1043(b) may be
13 satisfied by affidavits based on information and belief. (49 Cal.3d at 89.)
14

15 In *Abatti v. Superior Court, supra*, 112 Cal.App.4th 39, the *Pitchess* motion contained an
16 affidavit of counsel that related statements from other officers that the former officer had been
17 asked to leave, and had been the subject of other complaints, and was labeled a "liability" problem
18 for the department. *Id.* at 46-47. The court considered counsel's affidavit sufficient, even though
19 it merely averred the contents of the counseling memos rather than stating with specificity the
20 evidence which was contained therein. The court reasoned that to require such "specificity" in the
21 Pitchess process would place the proponent of the motion in a "Catch-22" position of having to
22 allege with particularity the very information he or she is seeking. *Id.* at 47, fn. 7.
23

24 **V. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**
25 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS CASE**

26 Relevance is defined by *Evidence Code* § 210, which provides that:
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1 "Relevant evidence" means evidence, including evidence relevant to the credibility of a
2 witness or hearsay declarant, having any tendency in reason to prove or disprove any
3 disputed fact that is of consequence to the determination of the action."

4 Relevance to the subject matter is to be broadly construed and is not limited to relevance
5 to the narrow issues of the case. *Greyhound Corporation v. Superior Court* (1961) 56 Cal.2d 355,
6 378, 390. As set forth above, in the *Pitchess* motion context, a declaration by counsel on
7 information and belief is sufficient to state facts to satisfy the 'materiality' component of *Evidence*
8 *Code* § 1043(a). *Abatti v. Superior Court, supra*, 112 Cal.App.4th at 51; *Haggerty v. Superior*
9 *Court, supra*, 17 Cal.App. 4th at 1086.

10 Here, there is a reasonable basis to conclude the internal investigation files at issue
11 contain information that are relevant and material to the lawsuit. (See *Robinson v. Superior Court,*
12 *supra*, 76 Cal.App.3d at 977 [noting that the relevancy of an investigation of the incident that is
13 the basis for the lawsuit is "self-evident"]. Indeed, the records requested involve the investigations
14 of the very matters in which plaintiff has asserted he engaged in the protected activities for which
15 plaintiff contends that he was retaliated against by defendant, and are therefore directly relevant
16 to the allegations in this case. Further, such documents, including the statements taken of
17 witnesses during the internal investigations by defendant, are evidence relevant to the credibility
18 of the witnesses.

19
20 It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
21 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
22 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
23 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
24 entities and law enforcement agencies with an unfair advantage in defending civil actions. A
25 public entity cannot invoke these code sections to withhold evidence relevant to the case. *Garden*
26 *Grove Police Dept. v. Superior Court, supra*, 89 Cal.App.4th at 433; c.f. *People v. Memro, supra*,
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1 38 Cal.3d at 679. As the court stated in *Gill v. Manuel* (9th Cir. 1973) 488 F.2d 799, 803,
2 *Evidence Code* §1040 is not "intended to provide a shield behind which law enforcement
3 personnel may seek refuge for possible wrongdoings."
4

5 **VI. PLAINTIFF HAS DEMONSTRATED GOOD CAUSE FOR THE PRODUCTION OF THE**
6 **REQUESTED INFORMATION AND DOCUMENTS**

7 The declaration submitted herewith contains facts that establish a plausible foundation to
8 conclude that defendant engaged in retaliation against plaintiff. The conduct by Lt. Jette was the
9 subject of one or more internal affairs investigations by the defendant. Plaintiff contends that his
10 engaging in protected activities regarding reporting, investigating, and making recommendations
11 in regard to the allegations of sexual and other misconduct by Lt. Jette was a motivating reason
12 for defendant engaging in retaliation against him, culminating in the termination of plaintiff's
13 employment with defendant. As such, the facts regarding these matters, which are of
14 consequence to the determination of this action, are disputed between the parties, and the
15 requested information, documents, and items are relevant and discoverable in regard to such
16 disputed issues.
17

18 **VII. CONCLUSION**

19 For each of the foregoing reasons, it is respectfully requested that the Court enter an order
20 directing the defendant to produce the records described in this motion for in camera inspection
21 by the Court and subsequent production to plaintiff.

22 Dated: 8/24/10

23 By: 

24 Gregory W. Smith
25 Christopher Brizzolara
26 Attorneys for Plaintiff
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DECLARATION OF CHRISTOPHER BRIZZOLARA

I, Christopher Brizzolara, do declare as follows:

1. I am an attorney at law licensed to practice in the State of California and one of the counsel of record for plaintiff herein. This declaration is made in support of plaintiff's motion to discover peace officer personnel records and to compel further verified responses to interrogatories and requests for production. Except where otherwise indicated, I have personal knowledge of the following, and if called to testify regarding same I could and would competently testify thereto.

2. This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police. As testified to by plaintiff in this action, plaintiff had been employed as a sworn peace officer with the BPD for over twenty six years and progressed steadily through the ranks of the BPD to the rank of Deputy Chief of Police, the second highest rank in the BPD.

3. In this action, plaintiff contends that in or around March, 2009, plaintiff complained to Chief Stehr that BPD Lieutenant Jay Jette was sexually harassing females at the Burbank Animal Shelter. Plaintiff contends that he recommended that the lieutenant be placed on leave pending an investigation of the lieutenant's misconduct, that Chief Stehr refused to place Lt. Jette on leave of sufficient length to conduct a thorough investigation of the allegations, and became angry at plaintiff for making the recommendation. Plaintiff contends that Chief Stehr subsequently insisted, over the objections of plaintiff, that Lieutenant Jette be prematurely taken off administrative leave and returned to full duty with the BPD place the lieutenant on leave, and became angry at plaintiff for making the recommendation.

1 4. Plaintiff contends that in or around March, 2009, plaintiff informed Burbank City Manager
2 Michael Flad ("Flad"), the highest ranking administrative official in the City of Burbank, on at least
3 two occasions about the magnitude of the sexual harassment conducted by Lt. Jette at the
4 Burbank Animal Shelter. Plaintiff contends that in or around April and May 2009, on at least two
5 separate occasions, plaintiff informed Flad that Lt. Jette had inside information regarding Chief
6 Stehr, and as a result thereof Chief Stehr had refused to place the lieutenant on sufficient
7 administrative leave. Plaintiff contends that he also informed Flad that he believed that Lt. Jette
8 had in fact sexually harassed females at the Burbank Animal Shelter.
9

10 5. Plaintiff contends that from in or around April, 2008 through May 4, 2009, plaintiff, then the
11 Deputy Chief of Police of the Burbank Police Department, complained on at least eight different
12 occasions to Chief Stehr that minority officers in the BPD were being subjected to discrimination,
13 and were being unjustly targeted for termination. Plaintiff contends in or around April, 2009,
14 plaintiff reported to Burbank City Councilwoman Marsha Ramos on at least two occasions, that
15 he believed that minority officers in the BPD were being subjected to discrimination by the BPD
16 by targeting them for unjust termination. Plaintiff contends that in or around April, 2009, plaintiff
17 reported to Burbank City Manager Flad on at least two occasion that he believed that minority
18 officers in the BPD were being subjected to discrimination by the BPD.
19

20 6. We contend that thereafter, on or about May 4, 2009, in retaliation for his whistleblowing
21 activities protected pursuant to *Labor Code* Section 1102.5 and protected activities in reporting
22 and protesting discrimination in violation of FEHA against other BPD employees, plaintiff was
23 demoted from the rank of Deputy Chief of Police to the rank of Captain. We further contend that
24 on or about January 21, 2010, plaintiff was placed on involuntary leave by the BPD for specious
25 and unfounded allegations of misconduct. We further contend that on or about June 11, 2010,
26 plaintiff was terminated from his employment by the BPD for specious and unfounded allegations
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1 of misconduct, and that a motivating reason for the BPD engaging in the above-described adverse
2 employment actions was plaintiff engaging the activities protected under FEHA of reporting and
3 opposing the sexual harassment, creation of a sexually hostile work environment, and/or other
4 discrimination based upon sex perpetrated by BPD Lt. Jette.

5 7. As such, the information and documents sought by this motion are directly relevant and
6 discoverable in regard to establishing that: a) the information reported by plaintiff to former BPD
7 Chief of Police Stehr and to Burbank City Manager Flad was credible; b) Lt. Jette had engaged
8 in sexual harassment, creating a sexually hostile work environment, and/or other forms of sexual
9 harassment and/or discrimination against female employees of the Burbank Animal Shelter; c)
10 defendant and its agents and/or employees, including former BPD Chief of Police Stehr and
11 Burbank City Manager Flad failed to take reasonable to prevent discrimination and/or harassment
12 by BPD Lt. Jay Jette from occurring in the City of Burbank Animal Shelter; and d) the defendant's
13 adverse employment actions taken against plaintiff were taken at least in part to retaliate against
14 plaintiff for reporting the misconduct of Lt. Jette, and to attempt to discredit plaintiff in order to
15 deflect attention away from the failure by former BPD Chief Stehr, Burbank City Manager Flad,
16 and other agents and/or employees of the defendant to take all reasonable steps to prevent the
17 sexual and other misconduct of Lt. Jette from occurring as they were required to do by
18 Government Code Section 12940(k) and other authorities. Such evidence is also directly relevant
19 and discoverable in regard to plaintiff establishing that the defendant's proffered reasons for the
20 adverse employment actions taken against him culminating in the termination of his employment
21 with defendant are false and pretextual.

22 8. Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
23 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
24 information and documents sought are directly relevant and material to plaintiff's contentions that
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1 the reasons given for the retaliatory actions by defendant are false, a sham, and simply a pretext
2 for retaliation. As such, the records pertaining to the investigations by defendant of the allegations
3 made against Lt. Jette are relevant and material. The information and documents sought should
4 be disclosed to plaintiff. In the alternative, such information and documents should be examined
5 by the court *in camera*, and all evidence relevant to plaintiff's claims should be turned over to
6 plaintiff's counsel.
7

8 9. Here, there is a reasonable basis to conclude the internal investigation files at issue
9 contain information that are relevant and material to the lawsuit. Indeed, the records requested
10 involve the investigations of some of the very matters which are the basis of plaintiff's cause of
11 action for retaliation in violation of FEHA, and to defendant's alleged defenses regarding this
12 cause of action, and are therefore directly relevant to the allegations in this case. Further, such
13 documents, including the statements taken of witnesses during the internal investigations by
14 defendant, are evidence relevant to the credibility of the witnesses therein.
15

16 10. It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
17 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
18 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
19 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
20 entities and law enforcement agencies with an unfair advantage in defending civil actions.
21

22 11. The conduct by Lt. Jette reported and opposed by plaintiff, and which plaintiff contends
23 was a motivating reason for the defendant's retaliatory actions against plaintiff, was the subject
24 of one or more internal affairs investigations by the defendant. Plaintiff contends that the
25 allegations against Lt. Jette were founded, and the information and documents regarding
26 defendant's investigation of such alleged misconduct will demonstrate that the allegations were
27 founded, and that defendant and its agents and employees attempted to conceal such
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1 misconduct, obstruct and impair investigations in regard thereto, and to conceal defendant's
2 failure to take all reasonable steps to stop such harassment and other misconduct from occurring,
3 as required by Government Code Section 12940(j) and (k) and other authorities. As such, the
4 facts regarding these matters, which are of consequence to the determination of this action, are
5 disputed between the parties, and the requested information, documents, and items are relevant
6 and discoverable in regard to such disputed issues.
7

8 12. By means of this motion, we request that the Court compel defendant to produce the
9 following documents for in camera inspection and subsequent production to plaintiff:

10 a. A completed copy of the BPD internal affairs investigation which originated in or around
11 March, 2009 pertaining to allegations that Jay Jette had engaged in sexual harassment, a sexually
12 hostile work environment, and/or sexual discrimination at the City of Burbank Animal Shelter;

13 b. All documents pertaining to allegations that Jay Jette perpetrated acts of sexual
14 harassment on City of Burbank Animal Shelter female employees, including, *inter alia*: a) Jay
15 Jette pointing a heat sensor at the crotch area of any female employee and stating: "oh, you're
16 hot down there, "it's hot down there", or words to that effect and/or substance; b) Jay Jette
17 making a sexual gesture toward any female employee who was eating a banana, and stating: "you
18 sure look like you are enjoying that banana", inferring as though the employee was engaging in
19 oral sex; and/or c) any other lewd gestures and/or comments toward female employees;
20

21 c. All documents pertaining to allegations and/or statements by City of Burbank Animal
22 Control Officer Brenda Castenada to BPD Captain Craig Varner, BPD Captain Janice Lowers,
23 and/or any other agent and/or employee of defendant regarding allegations of sexual harassment
24 concerning Jay Jette;
25

26 d. All documents pertaining to allegations that Jay Jette showed other employees sexually
27 inappropriate nude pictures on duty;
28

1 e. All documents pertaining to allegations that Jay Jette had photographs and/or
2 videotapes/video clips of nude individuals in his locker, on one or more computers, on a flash
3 drive, or elsewhere in the work environment, including all such photographs, videotapes, and/or
4 video clips, and all data files in regard thereto (jpeg, mpeg, or any other type of electronic
5 photographic and/or videographic data files) regarding such photographs, videotapes, and/or
6 video clips;
7

8 f. All documents pertaining to allegations that Jay Jette created and/or maintained hand
9 written notes regarding former BPD Chief of Police Tim Stehr related to Chief Stehr's inter-
10 departmental and/or other statements about kidnapping transients and removing them from the
11 City of Burbank;
12

13 g. All documents pertaining to allegations that Jay Jette kept numerous photographs of nude
14 females in his locker in the workplace;
15

16 h. All documents pertaining to allegations that Jay Jette kept \$10,000 dollars in his locker in
17 the workplace for unknown and/or for illegitimate reasons;
18

19 i. All documents pertaining to BPD Captain Janice Lowers being involved in any manner in
20 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
21 on City of Burbank Animal Shelter female employees;
22

23 j. All documents pertaining to BPD Captain Craig Varner being involved in any manner in
24 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
25 on City of Burbank Animal Shelter female employees;
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27 k. All documents pertaining to City Manager Michael Flad being involved in any manner in
28 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
on City of Burbank Animal Shelter female employees;

1 l. All documents pertaining to the Burbank Police Commission being involved in any manner
2 in regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
3 on City of Burbank Animal Shelter female employees;

4 m. All documents pertaining to City of Burbank Human Resources Director Judie Wilke being
5 involved in any manner in regard to any investigation into allegations that Jay Jette perpetrated
6 acts of sexual harassment on City of Burbank Animal Shelter female employees;

7 n. All documents pertaining to City of Burbank Assistant City Attorney Juli Scott and/or any
8 other member of the City of Burbank City Attorney's Office being involved in any manner in regard
9 to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City
10 of Burbank Animal Shelter female employees;

11 o. All documents pertaining to BPD Lt. Omar Rodriguez being involved in any manner in
12 regard to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment
13 on City of Burbank Animal Shelter female employees;

14 p. All documents pertaining to BPD Sgt. Misquez being involved in any manner in regard to
15 any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City of
16 Burbank Animal Shelter female employees;

17 q. All documents pertaining to BPD Lt. Jon Murphy being involved in any manner in regard
18 to any investigation into allegations that Jay Jette perpetrated acts of sexual harassment on City
19 of Burbank Animal Shelter female employees;

20 r. All documents pertaining to any City of Burbank Animal Shelter volunteer and/or employee
21 communicating with City of Burbank City Council Members regarding sexual harassment and/or
22 other misconduct at the City of Burbank Animal Shelter;

1 s. All documents pertaining to BPD Sgt. Jose Duran being assigned by BPD Captain Janice
2 Lowers to conduct any investigation into allegations that Jay Jette perpetrated acts of sexual
3 harassment on City of Burbank Animal Shelter female employees;

4 t. All documents pertaining to any investigation conducted by BPD Sgt. Jose Duran into
5 allegations that Jay Jette perpetrated acts of sexual harassment on City of Burbank Animal
6 Shelter female employees;

7 u. All documents pertaining to Jay Jette following and/or stalking BPD Sergeant Jose Duran;

8 v. All documents pertaining any investigation by BPD Lt. Omar Rodriguez regarding Jay Jette
9 following and/or stalking BPD Sergeant Jose Duran;

10 w. All documents pertaining any investigation by BPD Lt. Jon Murphy regarding Jay Jette
11 following and/or stalking BPD Sergeant Jose Durant;

12 x. All documents pertaining any investigation by BPD Sgt. Misquez regarding Jay Jette
13 following and/or stalking BPD Sergeant Jose Duran;

14 y. All documents, including memoranda, written by BPD Sgt. Jose Duran in which Sgt. Duran
15 alleged that he was being subjected to a separate hostile work environment, including, *inter alia*,
16 that he was the victim of burglaries, being followed around illegally, and harassed, and/or in which
17 Sgt. Duran requested that an internal investigation be conducted regarding these allegations;

18 z. All documents pertaining to BPD Sgt. Jose Duran complaining about Jay Jette following
19 and/or stalking him, including, *inter alia*: 1) any notes prepared by Jay Jette pertaining to Jay
20 Jette stalking and/or following BPD Sgt. Jose Duran; and 2) any memoranda prepared by and/or
21 submitted by BPD Sgt. Jose Duran complaining that Jay Jette and other BPD employees were
22 creating a hostile work environment for him;

1 aa. All documents pertaining to any steps taken by former BPD Chief of Police Tim Stehr
2 and/or any other agent and/or employee of the City of Burbank to prevent discrimination and/or
3 harassment by Jay Jette from occurring in the City of Burbank Animal Shelter;

4 bb. All documents pertaining to any communications between former BPD Chief of Police Tim
5 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
6 regarding allegations that Jay Jette had perpetrated acts of sexual harassment on City of Burbank
7 Animal Shelter female employees;

8 cc. A copy of each of Jay Jette's time cards for March, 2009 to present, including, *inter alia*,
9 all time cards evidencing when: 1) Jay Jette was placed on administrative leave; 2) Jay Jette was
10 returned to work by former BPD Chief Tim Stehr and/or other agents and/or employees of the City
11 of Burbank; and 3) Jay Jette was returned to administrative leave;

12 dd. All documents pertaining to any communications between former BPD Chief of Police Tim
13 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
14 regarding placing Jay Jette on administrative leave from 2009 to present;

15 ee. All employee comment cards and officer index cards referencing and/or evidencing any
16 disciplinary records and/or internal affairs files regarding Jay Jette from 2005 to present;

17 ff. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
18 the BPD into allegations that Jay Jette engaged in any misconduct from 2006 to present;

19 gg. All statements, including all audio tapes and transcriptions thereof, taken of any person
20 during any internal affairs or other investigation regarding allegations that Jay Jette engaged in
21 any misconduct from 2006 to present;

22 hh. All personnel or other complaints by any person against Jay Jette from 2006 to present;

23 ii. All documents evidencing or pertaining to any investigation, and the findings, evidence
24 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
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1 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
2 agents or employees regarding any of the above matters, including the entire internal affairs files;

3 jj. All documents evidencing or pertaining to any discipline, including but not limited to oral
4 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
5 Burbank, the Burbank Police Department, and/or their agents or employees against Jay Jette
6 regarding any of the above described matters;
7


8 kk. All documents evidencing or pertaining to whether Jay Jette was permitted by defendant
9 to keep a CCW (concealed firearm permit) and police retirement badge following his
10 separation/retirement from the BPD; and

11 ll. All documents evidencing or pertaining to any complaints, any investigations of any such
12 complaints, and the disposition of any such complaints, made by any person against Jay Jette
13 from 2006 to present, including internal complaints, personnel complaints, governmental claims,
14 or civil lawsuits.
15

16 13. The provision of the "names and addresses" of the complainants against the peace officers
17 identified herein is not be a sufficient response, and all documents evidencing and/or pertaining
18 to the complaints, investigative documents regarding the complaints, and disposition of the
19 complaints are requested. The relevance of these documents is substantial and not tangential.
20 These documents are directly relevant and material to establishing plaintiff's allegations that the
21 defendant committed the various retaliatory conduct of which it is accused, and to rebut the
22 alleged denials and affirmative defenses of defendant in this matter.
23
24
25
26
27
28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 24th day of August, 2010, at Santa Monica, California.

4
5
6 
CHRISTOPHER BRIZZOLARA

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3)
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the age of
6 18 years of age, and am not a party to the within action; my business address is Messenger
Express, 5503 Cahuenga Boulevard, Suite 100, North Hollywood, California 91601-2920.

7 On the date hereinbelow specified, I served true copies of the foregoing document,
8 described as set forth below on the interested parties in this action enclosed in sealed
9 envelopes, at Woodland Hills, addressed as follows:

10 DATE OF SERVICE : August 25, 2010

11 DOCUMENT SERVED : NOTICE OF MOTION AND MOTION FOR DISCOVERY OF PEACE
12 OFFICER PERSONNEL AND OTHER RECORDS REGARDING
13 BURBANK POLICE DEPARTMENT LIEUTENANT JAY JETTE;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF
CHRISTOPHER BRIZZOLARA

14 PARTIES SERVED : SEE ATTACHED SERVICE LIST.

15 XXX (BY PERSONAL SERVICE) I personally delivered by hand to the offices of the
addressee(s).

16 — (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to
17 **Christopher Brizzolara, Esq.** at the following e-mail address: samurai@adelphia.net.

18 XXX (STATE) I declare under penalty of perjury under the laws of the State of California that
19 the above is true and correct.

20 — (FEDERAL) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

21 EXECUTED at Woodland Hills, California on August 25, 2010.

22 _____ (Signature)
23 Print Name: _____
24 MESSENGER EXPRESS

SERVICE LIST

**WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

Attention: Chief's Office
Burbank Police Department
200 N. Third Street
Burbank, California 91502

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3)
4 COUNTY OF LOS ANGELES)
5

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 years of age, and am not a party to the within action; my business address is 6300 Canoga
Avenue, Suite 1590, Woodland Hills, California 91367.

8 On the date hereinbelow specified, I served the foregoing document, described as set
9 forth below on the interested parties in this action by placing true copies thereof enclosed in
sealed envelopes, at Woodland Hills, addressed as follows:

10 DATE OF SERVICE : August 25, 2010
11

12 DOCUMENT SERVED : NOTICE OF MOTION AND MOTION FOR DISCOVERY OF PEACE
13 OFFICER PERSONNEL AND OTHER RECORDS REGARDING
14 BURBANK POLICE DEPARTMENT LIEUTENANT JAY JETTE;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF
CHRISTOPHER BRIZZOLARA

15 PARTIES SERVED : Christopher Brizzolara, Esq.
16 1528 16th Street
17 Santa Monica, California 90404

18 XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to
19 Christopher Brizzolara, Esq. at the following e-mail address: samorai@adelphia.net.

20 XXX (STATE) I declare under penalty of perjury under the laws of the State of California that
21 the above is true and correct.

22 — (FEDERAL) I declare that I am employed in the office of a member of the bar of this
23 court at whose direction the service was made.

24 EXECUTED at Woodland Hills, California on August 25, 2010.
25

26 _____
Selma I. Francia
27
28